

**STUDENT PROSPERITY SAVINGS PROGRAM - TAX AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

---

---

**LONG TITLE****General Description:**

This bill creates the Student Prosperity Savings Program and related corporate and individual tax benefits.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ creates the Student Prosperity Savings Program;
- ▶ provides a method for donating to the Student Prosperity Savings Program and obtaining proof of the donation;
- ▶ provides a process for certain high school students to obtain tax-advantaged college savings accounts;
- ▶ permits a corporation to subtract a donation to the Student Prosperity Savings Program from unadjusted income;
- ▶ creates an individual tax credit for a donation to the Student Prosperity Savings Program; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

This bill appropriates in fiscal year 2018:

- ▶ to the Board of Regents -- Administration, as a one-time appropriation:
  - from the General Fund, \$40,000.
- ▶ to the Board of Regents -- Administration, as an ongoing appropriation:
  - from the General Fund, \$10,000.

**Other Special Clauses:**

This bill provides a special effective date.

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:



64 Authority under Title 53B, Chapter 12, Higher Education Assistance Authority.]

65 [(6) "Endowment fund" means the endowment fund established under Section  
66 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan.]

67 [(7) "Executive director" means the administrator appointed to administer and manage  
68 the Utah Educational Savings Plan.]

69 [(8) "Federally insured depository institution" means an institution whose deposits and  
70 accounts are to any extent insured by a federal deposit insurance agency, including the Federal  
71 Deposit Insurance Corporation and the National Credit Union Administration.]

72 [(9) "Grantor trust" means a trust, the income of which is for the benefit of the grantor  
73 under Section 677, Internal Revenue Code.]

74 [(10) "Higher education costs" means qualified higher education expenses as defined in  
75 Section 529(e)(3), Internal Revenue Code.]

76 [(11) "Owner of the grantor trust" means one or more individuals who are treated as an  
77 owner of a trust under Section 677, Internal Revenue Code, if that trust is a grantor trust.]

78 [(12)] (4) "Plan" means the Utah Educational Savings Plan created in Section  
79 53B-8a-103.

80 [(13) "Program fund" means the program fund created under Section 53B-8a-107,  
81 which is held as a separate fund within the Utah Educational Savings Plan.]

82 [(14) "Qualified investment" means an amount invested in accordance with an account  
83 agreement established under this chapter.]

84 [(15) "Tuition and fees" means the quarterly or semester charges imposed to attend an  
85 institution of higher education and required as a condition of enrollment.]

86 Section 2. Section **53B-8a-102.5** is enacted to read:

87 **53B-8a-102.5. Definitions for part.**

88 As used in this part:

89 (1) "Administrative fund" means the money used to administer the Utah Educational  
90 Savings Plan.

91 (2) "Board" means the board of directors of the Utah Educational Savings Plan, which  
92 is the State Board of Regents acting in the State Board of Regents' capacity as the Utah Higher  
93 Education Assistance Authority under Title 53B, Chapter 12, Higher Education Assistance  
94 Authority.

95 (3) "Endowment fund" means the endowment fund established under Section  
96 53B-8a-107, which is held as a separate fund within the Utah Educational Savings Plan.

97 (4) "Executive director" means the administrator appointed to administer and manage  
98 the Utah Educational Savings Plan.

99 (5) "Federally insured depository institution" means an institution whose deposits and  
100 accounts are to any extent insured by a federal deposit insurance agency, including the Federal  
101 Deposit Insurance Corporation and the National Credit Union Administration.

102 (6) "Grantor trust" means a trust, the income of which is for the benefit of the grantor  
103 under Section 677, Internal Revenue Code.

104 (7) "Higher education costs" means qualified higher education expenses as defined in  
105 Section 529(e)(3), Internal Revenue Code.

106 (8) "Owner of the grantor trust" means one or more individuals who are treated as an  
107 owner of a trust under Section 677, Internal Revenue Code, if that trust is a grantor trust.

108 (9) "Program fund" means the program fund created under Section 53B-8a-107, which  
109 is held as a separate fund within the Utah Educational Savings Plan.

110 (10) "Qualified investment" means an amount invested in accordance with an account  
111 agreement established under this part.

112 (11) "Tuition and fees" means the quarterly or semester charges imposed to attend an  
113 institution of higher education and required as a condition of enrollment.

114 Section 3. Section **53B-8a-201** is enacted to read:

115 **Part 2. Student Prosperity Savings Program**

116 **53B-8a-201. Definitions.**

117 As used in this part:

118 (1) "529 savings account" means a tax-advantaged method of saving for higher  
119 education costs on behalf of a particular individual that:

120 (a) meets the requirements of Section 529, Internal Revenue Code; and

121 (b) is managed by the plan.

122 (2) "Child" means an individual less than 20 years of age.

123 (3) "Community partner" means a nonprofit organization that provides services to a  
124 child who is economically disadvantaged or a family that has at least one child or foster child  
125 who is economically disadvantaged.

126 (4) "Donation" means a gift, grant, donation, or any other conveyance of money by a  
127 person other than the Legislature that is not made directly for the benefit or on behalf of a  
128 particular individual.

129 (5) "Economically disadvantaged" means that a child is:

130 (a) experiencing intergenerational poverty;

131 (b) a member or foster child of a family with an annual income at or below 185% of  
132 the federal poverty level; or

133 (c) living with a legal custodian or legal guardian with an annual family income at or  
134 below 185% of the federal poverty level.

135 (6) "Eligible individual" means an individual who:

136 (a) is at least 15 years of age and under 20 years of age;

137 (b) is a student in grade 10, grade 11, or grade 12 in Utah;

138 (c) is economically disadvantaged; and

139 (d) receives, or has a family member, a foster family member, or a legal custodian or  
140 legal guardian who receives, services from a community partner.

141 (7) "Federal poverty level" means the poverty level as defined by the most recently  
142 revised poverty income guidelines published by the United States Department of Health and  
143 Human Services in the Federal Register.

144 (8) "Higher education costs" means the same as that term is defined in Section  
145 53B-8a-102.5, except that the expenses must be incurred at:

146 (a) a credit-granting institution of higher education within the state system of higher  
147 education;

148 (b) a private, nonprofit college or university in the state that is accredited by the  
149 Northwestern Association of Schools and Colleges; or

150 (c) a college within the Utah College of Applied Technology.

151 (9) "Intergenerational poverty" means the same as that term is defined in Section  
152 35A-9-102.

153 (10) "Program" means the Student Prosperity Savings Program created in Section  
154 53B-8a-202.

155 Section 4. Section **53B-8a-202** is enacted to read:

156 **53B-8a-202. Student Prosperity Savings Program.**

- 157 (1) There is created the Student Prosperity Savings Program.  
158 (2) The program is funded by:  
159 (a) appropriations from the Legislature; and  
160 (b) donations made in accordance with Section 53B-8a-203.  
161 (3) (a) The plan shall administer the program.  
162 (b) The plan shall use the program to create 529 savings accounts in accordance with  
163 this part.

164 Section 5. Section **53B-8a-203** is enacted to read:

165 **53B-8a-203. Donations to the program.**

- 166 (1) (a) A person may make a donation to the program by:  
167 (i) sending the donation to the plan; and  
168 (ii) including with the donation, direction that the donation benefit the program.  
169 (b) A person making a donation shall include the person's name and mailing address  
170 with the donation.  
171 (2) (a) The plan shall mail a receipt to the person that makes the donation.  
172 (b) The receipt described in Subsection (2)(a) shall state:  
173 (i) the name of the person that made the donation;  
174 (ii) the amount of the donation; and  
175 (iii) the date on which the person makes the donation.  
176 (c) The date on which the person makes a donation to the program is the date on which  
177 the plan receives the donation, unless the plan receives the donation on a Saturday, a Sunday,  
178 or a holiday, in which case the date on which the person makes the donation shall be the first  
179 business day after the day on which the plan receives the donation.  
180 (d) A person that receives a receipt described in Subsection (2)(a) shall retain the  
181 receipt for the same time period a person is required to keep books and records under Section  
182 59-1-1406.

183 Section 6. Section **53B-8a-204** is enacted to read:

184 **53B-8a-204. Distribution of program money -- Application process --**

185 **Prioritization -- Account agreements.**

- 186 (1) The plan shall distribute money in the program by creating a 529 savings account  
187 for an eligible individual identified by a community partner.

188 (2) (a) (i) The plan shall carry out the responsibility described in Subsection (1) by  
189 establishing a process in which a community partner may apply for an allocation of program  
190 money to designate for eligible individuals.

191 (ii) The State Board of Regents shall establish the application process for a community  
192 partner to apply for an allocation of program money.

193 (iii) The application process described in Subsection (2)(a)(ii) shall include:

194 (A) the criteria for a community partner to apply for an allocation of program money;

195 (B) the criteria that the plan will use to prioritize applications if the dollar amounts  
196 requested in the applications exceed the dollar amount available;

197 (C) the requirements for establishing a 529 savings account in the name of an eligible  
198 individual; and

199 (D) the roles and responsibilities of a community partner that makes a successful  
200 application for an allocation of program money.

201 (b) (i) A community partner that receives an allocation of program money shall enter  
202 into a contract with the plan.

203 (ii) The contract described in Subsection (2)(b)(i) shall:

204 (A) define the roles and responsibilities of the community partner and the plan with  
205 regard to the community partner's allocation of program money; and

206 (B) specify that the individual the community partner identifies to receive a portion of  
207 the community partner's allocation is an eligible individual.

208 (3) If the plan approves a community partner's application for an allocation of program  
209 money, the plan may not promise or otherwise encumber the allocation to any other person  
210 unless the allocation is forfeited under Subsection (5)(b)(ii).

211 (4) (a) A community partner shall identify each eligible individual who will receive a  
212 portion of the community partner's allocation of program money.

213 (b) After a community partner identifies an eligible individual to receive a portion of  
214 the community partner's allocation, the community partner shall notify the plan of:

215 (i) the amount of the community partner's allocation that shall transfer to a 529 savings  
216 account in the name of the identified eligible individual; and

217 (ii) the amount, if any, that the community partner will be contributing in accordance  
218 with Part 1, Utah Educational Savings Plan, to the 529 savings account on behalf of the

219 identified eligible individual.

220 (5) (a) Upon receiving the information described in Subsection (4)(b), the plan shall  
221 establish a 529 savings account for the identified eligible individual, with the community  
222 partner as the account owner.

223 (b) The community partner shall inform the beneficiary that:

224 (i) within three years after the day on which the beneficiary graduates from high  
225 school, the beneficiary shall enroll in:

226 (A) a credit-granting institution of higher education within the state system of higher  
227 education;

228 (B) a private, nonprofit college or university in the state that is accredited by the  
229 Northwestern Association of Schools and Colleges; or

230 (C) a college within the Utah College of Applied Technology; and

231 (ii) if the beneficiary fails to enroll within three years after the day on which the  
232 beneficiary graduates from high school, any money that remains in the 529 savings account  
233 shall be returned to the program.

234 (c) After entering into the account agreement described in Subsection (5)(a), the plan  
235 shall deposit into the beneficiary's 529 savings account the amount of the allocation described  
236 in Subsection (4)(b)(i).

237 Section 7. Section **53B-8a-205** is enacted to read:

238 **53B-8a-205. Application of other provisions of this chapter.**

239 The provisions of Part 1, Utah Educational Savings Plan, except Subsection  
240 53B-8a-109(3), govern the 529 savings accounts established under the Student Prosperity  
241 Savings Program.

242 Section 8. Section **59-7-105** is amended to read:

243 **59-7-105. Additions to unadjusted income.**

244 In computing adjusted income the following amounts shall be added to unadjusted  
245 income:

246 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state  
247 of the United States, including any agency and instrumentality of a state of the United States;

248 (2) the amount of any deduction taken on a corporation's federal return for taxes paid  
249 by a corporation:

- 250 (a) to Utah for taxes imposed by this chapter; and
- 251 (b) to another state of the United States, a foreign country, a United States possession,  
252 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or  
253 exercising its corporate franchise, including income, franchise, corporate stock and business  
254 and occupation taxes;
- 255 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and  
256 (2)(a);
- 257 (4) capital losses that have been deducted on a Utah corporate return in previous years;
- 258 (5) any deduction on the federal return that has been previously deducted on the Utah  
259 return;
- 260 (6) charitable contributions, to the extent deducted on the federal return when  
261 determining federal taxable income;
- 262 (7) the amount of gain or loss determined under Section 59-7-114 relating to a target  
263 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already  
264 been included in the unadjusted income of the target corporation;
- 265 (8) the amount of gain or loss determined under Section 59-7-115 relating to  
266 corporations treated for federal purposes as having disposed of its assets under Section 336(e),  
267 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted  
268 income of the target corporation;
- 269 (9) adjustments to gains, losses, depreciation expense, amortization expense, and  
270 similar items due to a difference between basis for federal purposes and basis as computed  
271 under Section 59-7-107;
- 272 (10) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings  
273 Plan, from the account of a corporation that is an account owner as defined in Section  
274 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn  
275 from the account of the corporation that is the account owner:
- 276 (a) is not expended for:
- 277 (i) higher education costs as defined in Section ~~[53B-8a-102]~~ 53B-8a-102.5; or
- 278 (ii) a payment or distribution that qualifies as an exception to the additional tax for  
279 distributions not used for educational expenses provided in Sections 529(c) and 530(d),  
280 Internal Revenue Code; and

281 (b) is subtracted by the corporation:  
282 (i) that is the account owner; and  
283 (ii) in accordance with Subsection 59-7-106 (1)(r); and  
284 (11) the amount of the deduction for dividends paid, as defined in Section 561, Internal  
285 Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in  
286 computing the taxable income of a captive real estate investment trust, if that captive real estate  
287 investment trust is subject to federal income taxation.

288 Section 9. Section **59-7-106** is amended to read:

289 **59-7-106. Subtractions from unadjusted income.**

290 (1) In computing adjusted income, the following amounts shall be subtracted from  
291 unadjusted income:

292 (a) the foreign dividend gross-up included in gross income for federal income tax  
293 purposes under Section 78, Internal Revenue Code;

294 (b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the  
295 taxpayer elects to deduct the net capital loss on the return filed under this chapter for the  
296 taxable year for which the net capital loss is incurred;

297 (c) the decrease in salary expense deduction for federal income tax purposes due to  
298 claiming the federal work opportunity credit under Section 51, Internal Revenue Code;

299 (d) the decrease in qualified research and basic research expense deduction for federal  
300 income tax purposes due to claiming the federal credit for increasing research activities under  
301 Section 41, Internal Revenue Code;

302 (e) the decrease in qualified clinical testing expense deduction for federal income tax  
303 purposes due to claiming the federal credit for clinical testing expenses for certain drugs for  
304 rare diseases or conditions under Section 45C, Internal Revenue Code;

305 (f) any decrease in any expense deduction for federal income tax purposes due to  
306 claiming any other federal credit;

307 (g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and  
308 (2)(b);

309 (h) any income on the federal corporation income tax return that has been previously  
310 taxed by Utah;

311 (i) an amount included in federal taxable income that is due to a refund of a tax,

312 including a franchise tax, an income tax, a corporate stock and business tax, or an occupation  
313 tax:

314 (i) if that tax is imposed for the privilege of:

315 (A) doing business; or

316 (B) exercising a corporate franchise;

317 (ii) if that tax is paid by the corporation to:

318 (A) Utah;

319 (B) another state of the United States;

320 (C) a foreign country;

321 (D) a United States possession; or

322 (E) the Commonwealth of Puerto Rico; and

323 (iii) to the extent that tax was added to unadjusted income under Section 59-7-105;

324 (j) a charitable contribution, to the extent the charitable contribution is allowed as a  
325 subtraction under Section 59-7-109;

326 (k) subject to Subsection (3), 50% of a dividend considered to be received or received  
327 from a subsidiary that:

328 (i) is a member of the unitary group;

329 (ii) is organized or incorporated outside of the United States; and

330 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;

331 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a  
332 foreign operating company;

333 (m) the amount of gain or loss that is included in unadjusted income but not recognized  
334 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as  
335 defined in Section 338, Internal Revenue Code, if an election has been made in accordance  
336 with Section 338(h)(10), Internal Revenue Code;

337 (n) the amount of gain or loss that is included in unadjusted income but not recognized  
338 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance  
339 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal  
340 Revenue Code, has been made for federal purposes;

341 (o) subject to Subsection (5), an adjustment to the following due to a difference  
342 between basis for federal purposes and basis as computed under Section 59-7-107:

- 343 (i) an amortization expense;
- 344 (ii) a depreciation expense;
- 345 (iii) a gain;
- 346 (iv) a loss; or
- 347 (v) an item similar to Subsections (1)(o)(i) through (iv);
- 348 (p) an interest expense that is not deducted on a federal corporation income tax return
- 349 under Section 265(b) or 291(e), Internal Revenue Code;
- 350 (q) 100% of dividends received from a subsidiary that is an insurance company if that
- 351 subsidiary that is an insurance company is:
- 352 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and
- 353 (ii) under common ownership;
- 354 (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as
- 355 defined in Section 53B-8a-102 [~~shall subtract~~], the amount of a qualified investment as defined
- 356 in Section [~~53B-8a-102~~] 53B-8a-102.5:
- 357 (i) that the corporation or a person other than the corporation makes into an account
- 358 owned by the corporation during the taxable year;
- 359 (ii) to the extent that neither the corporation nor the person other than the corporation
- 360 described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax
- 361 return; and
- 362 (iii) to the extent the qualified investment does not exceed the maximum amount of the
- 363 qualified investment that may be subtracted from unadjusted income for a taxable year in
- 364 accordance with Subsection 53B-8a-106(1);
- 365 (s) for a corporation that makes a donation, as that term is defined in Section
- 366 53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the
- 367 amount of the donation to the extent that the corporation did not deduct the donation on a
- 368 federal income tax return;
- 369 [~~(s)~~] (t) for purposes of income included [in a combined report under Part 4, Combined
- 370 Reporting, the entire amount of the dividends a member of a unitary group receives or is
- 371 considered to receive from a captive real estate investment trust; and
- 372 [~~(t)~~] (u) the increase in income for federal income tax purposes due to claiming a:
- 373 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or

374 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code.

375 (2) For purposes of Subsection (1)(b):

376 (a) the subtraction shall be made by claiming the subtraction on a return filed:

377 (i) under this chapter for the taxable year for which the net capital loss is incurred; and

378 (ii) by the due date of the return, including extensions; and

379 (b) a net capital loss for a taxable year shall be:

380 (i) subtracted for the taxable year for which the net capital loss is incurred; or

381 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue

382 Code.

383 (3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a

384 taxpayer shall first subtract from a dividend considered to be received or received an expense

385 directly attributable to that dividend.

386 (b) For purposes of Subsection (3)(a), the amount of an interest expense that is

387 considered to be directly attributable to a dividend is calculated by multiplying the interest

388 expense by a fraction:

389 (i) the numerator of which is the taxpayer's average investment in the dividend paying

390 subsidiaries; and

391 (ii) the denominator of which is the taxpayer's average total investment in assets.

392 (c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in

393 determining income apportionable to this state, a portion of the factors of a foreign subsidiary

394 that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the

395 combined report factors as provided in this Subsection (3)(c).

396 (ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign

397 subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be

398 included in the combined report factors is calculated by multiplying each factor of the foreign

399 subsidiary by a fraction:

400 (A) not to exceed 100%; and

401 (B) (I) the numerator of which is the amount of the dividend paid by the foreign

402 subsidiary that is included in adjusted income; and

403 (II) the denominator of which is the current year earnings and profits of the foreign

404 subsidiary as determined under the Internal Revenue Code.

405 (4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under  
406 Subsection (1)(l):

407 (i) if the taxpayer elects to file a worldwide combined report as provided in Section  
408 59-7-403; or

409 (ii) for the following:

410 (A) income generated from intangible property; or

411 (B) a capital gain, dividend, interest, rent, royalty, or other similar item that is  
412 generated from an asset held for investment and not from a regular business trading activity.

413 (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating  
414 company:

415 (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

416 (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a  
417 transaction that occurs between members of a unitary group.

418 (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining  
419 income apportionable to this state, the factors for a foreign operating company shall be  
420 included in the combined report factors in the same percentages as the foreign operating  
421 company's adjusted income is included in the combined adjusted income.

422 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
423 commission may by rule define what constitutes:

424 (i) income generated from intangible property; or

425 (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is  
426 generated from an asset held for investment and not from a regular business trading activity.

427 (5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of  
428 a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax  
429 credit is claimed if:

430 (i) there is a reduction in federal basis for a federal tax credit; and

431 (ii) there is no corresponding tax credit allowed in this state.

432 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
433 commission may by rule define what constitutes an item similar to Subsections (1)(o)(i)  
434 through (iv).

435 Section 10. Section **59-10-114 (Effective 01/01/17)** is amended to read:

436           **59-10-114 (Effective 01/01/17). Additions to and subtractions from adjusted gross**  
437 **income of an individual.**

438           (1) There shall be added to adjusted gross income of a resident or nonresident  
439 individual:

440           (a) a lump sum distribution that the taxpayer does not include in adjusted gross income  
441 on the taxpayer's federal individual income tax return for the taxable year;

442           (b) the amount of a child's income calculated under Subsection (4) that:

443           (i) a parent elects to report on the parent's federal individual income tax return for the  
444 taxable year; and

445           (ii) the parent does not include in adjusted gross income on the parent's federal  
446 individual income tax return for the taxable year;

447           (c) (i) a withdrawal from a medical care savings account and any penalty imposed for  
448 the taxable year if:

449           (A) the resident or nonresident individual does not deduct the amounts on the resident  
450 or nonresident individual's federal individual income tax return under Section 220, Internal  
451 Revenue Code;

452           (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

453           (C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a  
454 return the resident or nonresident individual files under this chapter;

455           (ii) a disbursement required to be added to adjusted gross income in accordance with  
456 Subsection 31A-32a-105(3); or

457           (iii) an amount required to be added to adjusted gross income in accordance with  
458 Subsection 31A-32a-105(5)(c);

459           (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,  
460 from the account of a resident or nonresident individual who is an account owner as defined in  
461 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount  
462 withdrawn from the account of the resident or nonresident individual who is the account  
463 owner:

464           (i) is not expended for:

465           (A) higher education costs as defined in Section [~~53B-8a-102~~] 53B-8a-102.5; or

466           (B) a payment or distribution that qualifies as an exception to the additional tax for

467 distributions not used for educational expenses provided in Sections 529(c) and 530(d),  
468 Internal Revenue Code; and

469 (ii) is:

470 (A) subtracted by the resident or nonresident individual:

471 (I) who is the account owner; and

472 (II) on the resident or nonresident individual's return filed under this chapter for a  
473 taxable year beginning on or before December 31, 2007; or

474 (B) used as the basis for the resident or nonresident individual who is the account  
475 owner to claim a tax credit under Section 59-10-1017;

476 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of  
477 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other  
478 evidences of indebtedness issued by one or more of the following entities:

479 (i) a state other than this state;

480 (ii) the District of Columbia;

481 (iii) a political subdivision of a state other than this state; or

482 (iv) an agency or instrumentality of an entity described in Subsections (1)(e)(i) through  
483 (iii);

484 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a  
485 resident trust of income that was taxed at the trust level for federal tax purposes, but was  
486 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);

487 (g) any distribution received by a resident beneficiary of a nonresident trust of  
488 undistributed distributable net income realized by the trust on or after January 1, 2004, if that  
489 undistributed distributable net income was taxed at the trust level for federal tax purposes, but  
490 was not taxed at the trust level by any state, with undistributed distributable net income  
491 considered to be distributed from the most recently accumulated undistributed distributable net  
492 income; and

493 (h) any adoption expense:

494 (i) for which a resident or nonresident individual receives reimbursement from another  
495 person; and

496 (ii) to the extent to which the resident or nonresident individual subtracts that adoption  
497 expense:

498 (A) on a return filed under this chapter for a taxable year beginning on or before  
499 December 31, 2007; or

500 (B) from federal taxable income on a federal individual income tax return.

501 (2) There shall be subtracted from adjusted gross income of a resident or nonresident  
502 individual:

503 (a) the difference between:

504 (i) the interest or a dividend on an obligation or security of the United States or an  
505 authority, commission, instrumentality, or possession of the United States, to the extent that  
506 interest or dividend is:

507 (A) included in adjusted gross income for federal income tax purposes for the taxable  
508 year; and

509 (B) exempt from state income taxes under the laws of the United States; and

510 (ii) any interest on indebtedness incurred or continued to purchase or carry the  
511 obligation or security described in Subsection (2)(a)(i);

512 (b) for taxable years beginning on or after January 1, 2000, if the conditions of  
513 Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

514 (i) during a time period that the Ute tribal member resides on homesteaded land  
515 diminished from the Uintah and Ouray Reservation; and

516 (ii) from a source within the Uintah and Ouray Reservation;

517 (c) an amount received by a resident or nonresident individual or distribution received  
518 by a resident or nonresident beneficiary of a resident trust:

519 (i) if that amount or distribution constitutes a refund of taxes imposed by:

520 (A) a state; or

521 (B) the District of Columbia; and

522 (ii) to the extent that amount or distribution is included in adjusted gross income for  
523 that taxable year on the federal individual income tax return of the resident or nonresident  
524 individual or resident or nonresident beneficiary of a resident trust;

525 (d) the amount of a railroad retirement benefit:

526 (i) paid:

527 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et  
528 seq.;

- 529 (B) to a resident or nonresident individual; and
- 530 (C) for the taxable year; and
- 531 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
- 532 that resident or nonresident individual's federal individual income tax return for that taxable
- 533 year; and
- 534 (e) an amount:
- 535 (i) received by an enrolled member of an American Indian tribe; and
- 536 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
- 537 part on that amount in accordance with:
- 538 (A) federal law;
- 539 (B) a treaty; or
- 540 (C) a final decision issued by a court of competent jurisdiction.
- 541 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:
- 542 (i) the taxpayer is a Ute tribal member; and
- 543 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
- 544 requirements of this Subsection (3).
- 545 (b) The agreement described in Subsection (3)(a):
- 546 (i) may not:
- 547 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 548 (B) provide a subtraction under this section greater than or different from the
- 549 subtraction described in Subsection (2)(b); or
- 550 (C) affect the power of the state to establish rates of taxation; and
- 551 (ii) shall:
- 552 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
- 553 (B) be in writing;
- 554 (C) be signed by:
- 555 (I) the governor; and
- 556 (II) the chair of the Business Committee of the Ute tribe;
- 557 (D) be conditioned on obtaining any approval required by federal law; and
- 558 (E) state the effective date of the agreement.
- 559 (c) (i) The governor shall report to the commission by no later than February 1 of each

560 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is  
561 in effect.

562 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the  
563 subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or  
564 after the January 1 following the termination of the agreement.

565 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,  
566 Utah Administrative Rulemaking Act, the commission may make rules:

567 (i) for determining whether income is derived from a source within the Uintah and  
568 Ouray Reservation; and

569 (ii) that are substantially similar to how adjusted gross income derived from Utah  
570 sources is determined under Section 59-10-117.

571 (4) (a) For purposes of this Subsection (4), "Form 8814" means:

572 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's  
573 Interest and Dividends; or

574 (ii) (A) a form designated by the commission in accordance with Subsection  
575 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal  
576 individual income taxes the information contained on 2000 Form 8814 is reported on a form  
577 other than Form 8814; and

578 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter  
579 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as  
580 being substantially similar to 2000 Form 8814 if for purposes of federal individual income  
581 taxes the information contained on 2000 Form 8814 is reported on a form other than Form  
582 8814.

583 (b) The amount of a child's income added to adjusted gross income under Subsection  
584 (1)(b) is equal to the difference between:

585 (i) the lesser of:

586 (A) the base amount specified on Form 8814; and

587 (B) the sum of the following reported on Form 8814:

588 (I) the child's taxable interest;

589 (II) the child's ordinary dividends; and

590 (III) the child's capital gain distributions; and

591 (ii) the amount not taxed that is specified on Form 8814.

592 (5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences  
593 of indebtedness issued by an entity described in Subsections (1)(e)(i) through (iv) may not be  
594 added to adjusted gross income of a resident or nonresident individual if, as annually  
595 determined by the commission:

596 (a) for an entity described in Subsection (1)(e)(i) or (ii), the entity and all of the  
597 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
598 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

599 (b) for an entity described in Subsection (1)(e)(iii) or (iv), the following do not impose  
600 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of  
601 this state:

602 (i) the entity; or

603 (ii) (A) the state in which the entity is located; or

604 (B) the District of Columbia, if the entity is located within the District of Columbia.

605 Section 11. Section **59-10-202** is amended to read:

606 **59-10-202. Additions to and subtractions from unadjusted income of a resident or**  
607 **nonresident estate or trust.**

608 (1) There shall be added to unadjusted income of a resident or nonresident estate or  
609 trust:

610 (a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal  
611 Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in  
612 determining adjusted gross income;

613 (b) except as provided in Subsection (3), for bonds, notes, and other evidences of  
614 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other  
615 evidences of indebtedness issued by one or more of the following entities:

616 (i) a state other than this state;

617 (ii) the District of Columbia;

618 (iii) a political subdivision of a state other than this state; or

619 (iv) an agency or instrumentality of an entity described in Subsections (1)(b)(i) through  
620 (iii);

621 (c) any portion of federal taxable income for a taxable year if that federal taxable

622 income is derived from stock:

623 (i) in an S corporation; and

624 (ii) that is held by an electing small business trust;

625 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,  
626 from the account of a resident or nonresident estate or trust that is an account owner as defined  
627 in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount  
628 withdrawn from the account of the resident or nonresident estate or trust that is the account  
629 owner:

630 (i) is not expended for:

631 (A) higher education costs as defined in Section [~~53B-8a-102~~] 53B-8a-102.5; or

632 (B) a payment or distribution that qualifies as an exception to the additional tax for  
633 distributions not used for educational expenses provided in Sections 529(c) and 530(d),  
634 Internal Revenue Code; and

635 (ii) is:

636 (A) subtracted by the resident or nonresident estate or trust:

637 (I) that is the account owner; and

638 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a  
639 taxable year beginning on or before December 31, 2007; or

640 (B) used as the basis for the resident or nonresident estate or trust that is the account  
641 owner to claim a tax credit under Section 59-10-1017; and

642 (e) any fiduciary adjustments required by Section 59-10-210.

643 (2) There shall be subtracted from unadjusted income of a resident or nonresident  
644 estate or trust:

645 (a) the interest or a dividend on obligations or securities of the United States and its  
646 possessions or of any authority, commission, or instrumentality of the United States, to the  
647 extent that interest or dividend is included in gross income for federal income tax purposes for  
648 the taxable year but exempt from state income taxes under the laws of the United States, but  
649 the amount subtracted under this Subsection (2) shall be reduced by any interest on  
650 indebtedness incurred or continued to purchase or carry the obligations or securities described  
651 in this Subsection (2), and by any expenses incurred in the production of interest or dividend  
652 income described in this Subsection (2) to the extent that such expenses, including amortizable

653 bond premiums, are deductible in determining federal taxable income;

654 (b) income of an irrevocable resident trust if:

655 (i) the income would not be treated as state taxable income derived from Utah sources

656 under Section 59-10-204 if received by a nonresident trust;

657 (ii) the trust first became a resident trust on or after January 1, 2004;

658 (iii) no assets of the trust were held, at any time after January 1, 2003, in another

659 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

660 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

661 (v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the

662 settlor or any other person is treated as an owner of any portion of the trust under Subtitle A,

663 Subchapter J, Subpart E of the Internal Revenue Code; and

664 (vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on

665 indebtedness incurred or continued to purchase or carry the assets generating the income

666 described in this Subsection (2)(b), and by any expenses incurred in the production of income

667 described in this Subsection (2)(b), to the extent that those expenses, including amortizable

668 bond premiums, are deductible in determining federal taxable income;

669 (c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or

670 nonresident estate or trust derived from a deceased Ute tribal member:

671 (i) during a time period that the Ute tribal member resided on homesteaded land

672 diminished from the Uintah and Ouray Reservation; and

673 (ii) from a source within the Uintah and Ouray Reservation;

674 (d) any amount:

675 (i) received by a resident or nonresident estate or trust;

676 (ii) that constitutes a refund of taxes imposed by:

677 (A) a state; or

678 (B) the District of Columbia; and

679 (iii) to the extent that amount is included in total income on that resident or nonresident

680 estate's or trust's federal tax return for estates and trusts for that taxable year;

681 (e) the amount of a railroad retirement benefit:

682 (i) paid:

683 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et

684 seq.;

685 (B) to a resident or nonresident estate or trust derived from a deceased resident or  
686 nonresident individual; and

687 (C) for the taxable year; and

688 (ii) to the extent that railroad retirement benefit is included in total income on that  
689 resident or nonresident estate's or trust's federal tax return for estates and trusts;

690 (f) an amount:

691 (i) received by a resident or nonresident estate or trust if that amount is derived from a  
692 deceased enrolled member of an American Indian tribe; and

693 (ii) to the extent that the state is not authorized or permitted to impose a tax under this  
694 part on that amount in accordance with:

695 (A) federal law;

696 (B) a treaty; or

697 (C) a final decision issued by a court of competent jurisdiction;

698 (g) the amount that a qualified nongrantor charitable lead trust deducts under Section  
699 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the  
700 qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for  
701 the taxable year; and

702 (h) any fiduciary adjustments required by Section 59-10-210.

703 (3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences  
704 of indebtedness issued by an entity described in Subsections (1)(b)(i) through (iv) may not be  
705 added to unadjusted income of a resident or nonresident estate or trust if, as annually  
706 determined by the commission:

707 (a) for an entity described in Subsection (1)(b)(i) or (ii), the entity and all of the  
708 political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on  
709 income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

710 (b) for an entity described in Subsection (1)(b)(iii) or (iv), the following do not impose  
711 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of  
712 this state:

713 (i) the entity; or

714 (ii) (A) the state in which the entity is located; or

715 (B) the District of Columbia, if the entity is located within the District of Columbia.  
716 (4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:  
717 (i) the income is derived from a deceased Ute tribal member; and  
718 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the  
719 requirements of this Subsection (4).  
720 (b) The agreement described in Subsection (4)(a):  
721 (i) may not:  
722 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;  
723 (B) provide a subtraction under this section greater than or different from the  
724 subtraction described in Subsection (2)(c); or  
725 (C) affect the power of the state to establish rates of taxation; and  
726 (ii) shall:  
727 (A) provide for the implementation of the subtraction described in Subsection (2)(c);  
728 (B) be in writing;  
729 (C) be signed by:  
730 (I) the governor; and  
731 (II) the chair of the Business Committee of the Ute tribe;  
732 (D) be conditioned on obtaining any approval required by federal law; and  
733 (E) state the effective date of the agreement.  
734 (c) (i) The governor shall report to the commission by no later than February 1 of each  
735 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is  
736 in effect.  
737 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the  
738 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or  
739 after the January 1 following the termination of the agreement.  
740 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,  
741 Utah Administrative Rulemaking Act, the commission may make rules:  
742 (i) for determining whether income is derived from a source within the Uintah and  
743 Ouray Reservation; and  
744 (ii) that are substantially similar to how adjusted gross income derived from Utah  
745 sources is determined under Section 59-10-117.

746 Section 12. Section **59-10-1017** is amended to read:

747 **59-10-1017. Utah Educational Savings Plan tax credit.**

748 (1) As used in this section:

749 (a) "Account owner" means the same as that term is defined in Section 53B-8a-102.

750 (b) "Grantor trust" means the same as that term is defined in Section [~~53B-8a-102~~]

751 53B-8a-102.5.

752 (c) "Higher education costs" means the same as that term is defined in Section

753 [~~53B-8a-102~~] 53B-8a-102.5.

754 (d) "Maximum amount of a qualified investment for the taxable year" means, for a  
755 taxable year, the product of 5% and:

756 (i) subject to Subsection (1)(d)(iii), for a claimant, estate, or trust that is an account  
757 owner, if that claimant, estate, or trust is other than husband and wife account owners who file  
758 a single return jointly, the maximum amount of a qualified investment:

759 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

760 (B) increased or kept for that taxable year in accordance with Subsections  
761 53B-8a-106(1)(f) and (g);

762 (ii) subject to Subsection (1)(d)(iii), for claimants who are husband and wife account  
763 owners who file a single return jointly, the maximum amount of a qualified investment:

764 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

765 (B) increased or kept for that taxable year in accordance with Subsections  
766 53B-8a-106(1)(f) and (g); or

767 (iii) for a grantor trust:

768 (A) if the owner of the grantor trust has a single filing status or head of household  
769 filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(d)(i); or

770 (B) if the owner of the grantor trust has a joint filing status as defined in Section  
771 59-10-1018, the amount described in Subsection (1)(d)(ii).

772 (e) "Owner of the grantor trust" means the same as that term is defined in Section  
773 53B-8a-102.

774 (f) "Qualified investment" means the same as that term is defined in Section  
775 53B-8a-102.

776 (2) Except as provided in Section 59-10-1002.2 and subject to the other provisions of

777 this section, a claimant, estate, or trust that is an account owner may claim a nonrefundable tax  
778 credit equal to the product of:

779 (a) the amount of a qualified investment made:

780 (i) during the taxable year; and

781 (ii) into an account owned by the claimant, estate, or trust; and

782 (b) 5%.

783 (3) A claimant, estate, or trust, or a person other than the claimant, estate, or trust, may  
784 make a qualified investment described in Subsection (2).

785 (4) A claimant, estate, or trust that is an account owner may not claim a tax credit  
786 under this section [~~may not be claimed~~] with respect to any portion of a qualified investment  
787 described in Subsection (2) that a claimant, estate, trust, or person described in Subsection (3)  
788 deducts on a federal income tax return.

789 (5) A tax credit under this section may not exceed the maximum amount of a qualified  
790 investment for the taxable year.

791 (6) A claimant, estate, or trust that is an account owner may not carry forward or carry  
792 back the tax credit under this section [~~may not be carried forward or carried back~~].

793 (7) A claimant, estate, or trust may claim a tax credit under this section in addition to  
794 the tax credit described in Section 59-10-1017.1.

795 Section 13. Section **59-10-1017.1** is enacted to read:

796 **59-10-1017.1. Student Prosperity Savings Program tax credit.**

797 (1) As used in this section, "qualified donation" means an amount donated, in  
798 accordance with Section 53B-8a-203, to the Student Prosperity Savings Program created in  
799 Section 53B-8a-202.

800 (2) A claimant, estate, or trust may claim a nonrefundable tax credit for a qualified  
801 donation.

802 (3) The tax credit equals the product of:

803 (a) the qualified donation; and

804 (b) 5%.

805 (4) A claimant, estate, or trust may not claim a tax credit under this section with  
806 respect to any portion of a qualified donation that a claimant, estate, or trust deducts on a  
807 federal income tax return.

808 (5) A claimant, estate, or trust may not carry forward or carry back the portion of the  
 809 tax credit allowed by this section that exceeds the claimant's, estate's, or trust's tax liability for  
 810 the taxable year in which the claimant, estate, or trust claims the tax credit.

811 (6) A claimant, estate, or trust may claim a tax credit under this section in addition to  
 812 the tax credit described in Section 59-10-1017.

813 Section 14. **Appropriation.**

814 The following sums of money are appropriated for the fiscal year beginning July 1,  
 815 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for  
 816 fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures  
 817 Act, the Legislature appropriates the following sums of money from the funds or accounts  
 818 indicated for the use and support of the government of the state of Utah.

819 ITEM 1

820 To the Board of Regents

821 <u>From General Fund, One-time</u>	<u>\$40,000</u>
--	-----------------

822 Schedule of Programs:

823 <u>Administration</u>	<u>\$40,000</u>
---------------------------	-----------------

824 ITEM 2

825 To the Board of Regents

826 <u>From General Fund</u>	<u>\$10,000</u>
------------------------------	-----------------

827 Schedule of Programs:

828 <u>Administration</u>	<u>\$10,000</u>
---------------------------	-----------------

829 The Legislature intends that the Board of Regents use the appropriation under this  
 830 section to carry out the requirements described in Sections 53B-8a-202 through 53B-8a-204.

831 Section 15. **Effective date and retrospective operation.**

832 (1) Except as provided in Subsection (2), if approved by two-thirds of all the members  
 833 elected to each house, this bill takes effect upon approval by the governor, or the day following  
 834 the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's  
 835 signature, or in the case of a veto, the date of veto override.

836 (2) The amendments to Sections 59-7-105, 59-7-106, 59-10-114, 59-10-202, and  
 837 59-10-1017 and the enactment of Section 59-10-1017.1 have retrospective operation for a  
 838 taxable year beginning on or after January 1, 2017.

